

STATE OF CALIFORNIA

C A L I F O R N I A    L A W

R E V I S I O N    C O M M I S S I O N

TENTATIVE RECOMMENDATION

relating to

THE NEW ESTATE AND TRUST CODE

(DISTRIBUTION AND DISCHARGE)

May 1986

This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be considered when the Commission determines the provisions it will include in the new Estate and Trust Code which the Commission plans to recommend to the Legislature in 1987. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE SENT TO THE COMMISSION NOT LATER THAN JULY 31, 1986.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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May 15, 1986

LETTER OF TRANSMITTAL

The California Law Revision Commission is now devoting its time and resources almost exclusively to the study of probate law and procedure. The goal is to submit a new Estate and Trust Code to the Legislature for enactment in 1987. The new code would replace the existing Probate Code. The Commission is sending drafts of portions of the new code to interested persons and organizations for review and comment.

This tentative recommendation sets forth the Commission's tentative conclusions concerning the portion of the new code relating to distribution and discharge (existing Prob. Code §§ 1000-1106).

The preliminary portion of the tentative recommendation indicates the principal substantive revisions the proposed legislation would make in existing law.

The proposed legislation is drafted as a part of the new code. In some cases, you will find a reference to other portions of the new code that are still being prepared and are not yet available.

A Comment follows each section of the proposed legislation. The Comment gives the source of the section and indicates the nature of the changes the section would make in existing law.

Comments showing the disposition of each section of existing law that would be replaced by the proposed legislation can be found in the Appendix (green pages) at the end of the tentative recommendation.

## DISTRIBUTION AND DISCHARGE

The proposed law generally restates and reorganizes for clarity the existing provisions governing distribution of the decedent's estate and discharge of the personal representative. While the scheme of existing law is largely preserved, the proposed law does make numerous minor or technical improvements that are noted in the Comments following the draft provisions. The more significant substantive changes are discussed below.

Costs of preliminary distribution proceeding. If a beneficiary petitions for preliminary distribution, existing law imposes the cost of the proceeding on the beneficiary.<sup>1</sup> This may be inappropriate, for example, where the beneficiary is forced to make the petition because of undue delay by the personal representative. The proposed law gives the court discretion whether to impose costs on the beneficiary or to apportion them between the beneficiary and the estate, as may be appropriate to the circumstances.

Supplementary account. Even though there is a final order of distribution made upon the personal representative's final account, existing law provides for a supplementary account and settlement for receipts and disbursements occurring thereafter.<sup>2</sup> The proposed law avoids this awkward arrangement by simply providing that the personal representative is responsible for distribution pursuant to the court order for final distribution. This responsibility includes responsibility for proper disposition of income accruing during the distribution period. Where the court order fails to deal with after-acquired or after-discovered property, the personal representative may petition for instructions if not yet discharged, or the estate may be reopened.

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1. Prob. Code § 1002.

2. Prob. Code § 1020.5.

Determination of persons entitled to distribution. Existing law provides a special procedure for determination of persons entitled to distribution.<sup>3</sup> The procedure includes a jury trial and special evidentiary rules. There is nothing so unique about the determination made in such a proceeding that requires rules that differ from the general rules of civil practice that govern all other probate procedures, or that precludes the court from making the determination. The proposed law provides for court determination of persons entitled to distribution and eliminates the special evidentiary rules found in existing law.

Deceased distributee. A special problem occurs where a named distributee of the decedent's property dies before the property is distributed. Ordinarily in that situation the property must be distributed to the deceased distributee's estate for further probate. However, existing law avoids the need for a second probate by allowing direct distribution to the deceased distributee's heirs where the distributee was an unmarried minor who died intestate.<sup>4</sup> It would also be appropriate to allow direct distribution to the deceased distributee's heirs where the amount to be distributed to the heirs is small and the heirs present an appropriate affidavit under the provisions governing distribution of small estates without administration.<sup>5</sup> The proposed law implements such a procedure.

Unclaimed property. If personal property ordered distributed remains unclaimed a year after the order, the property may be sold and the proceeds deposited with the county treasury for safekeeping.<sup>6</sup> The one year delay is unnecessarily long, and the proposed law reduces the period of delay to 90 days. When the distributee appears to claim the proceeds, however, existing law requires a court order upon noticed

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3. Prob. Code §§ 1080-1082.

4. Prob. Code § 1023.

5. Prob. Code §§ 13000 et seq. (currently §§ 630 et seq.)

6. Prob. Code § 1062.

hearing even though the claim is routine.<sup>7</sup> The proposed law enables the order to be made ex parte, subject to court requirement of notice in appropriate cases.

Receipt of distributee. Before the personal representative may be discharged the personal representative must show the court that the estate property has been properly distributed.<sup>8</sup> The proposed law replaces this requirement with a procedure by which the personal representative simply files receipts at or before the time of the petition for discharge. In the case of real property, identification of the record location of the court order of distribution or the personal representative's deed serves as a sufficient receipt.<sup>9</sup>

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7. Prob. Code § 1064.

8. Prob. Code § 1066.

9. The recordation procedure replaces the provision of existing Section 1065 for a life tenant's acknowledgment of the life tenancy to the remainderman.

Outline

PART 10. DISTRIBUTION OF ESTATE

CHAPTER 1. ORDER FOR DISTRIBUTION

Article 1. General Provisions

- § 11600. Petition for distribution
- § 11601. Notice of hearing
- § 11602. Opposition to petition
- § 11603. Hearing and order
- § 11604. Distribution to person other than beneficiary
- § 11605. Conclusiveness of order

Article 2. Preliminary Distribution

- § 11620. Time for petition
- § 11621. Order for distribution
- § 11622. Bond
- § 11623. Distribution under Independent Administration of Estates Act
- § 11624. Costs of proceeding

Article 3. Final Distribution

- § 11640. Petition and order
- § 11641. After-acquired or after-discovered property

CHAPTER 2. DETERMINATION OF PERSONS ENTITLED TO DISTRIBUTION

- § 11700. Petition
- § 11701. Notice of hearing
- § 11702. Responsive pleading
- § 11703. Attorney General as party
- § 11704. Hearing
- § 11705. Court order

CHAPTER 3. DISTRIBUTION TO PERSONS ENTITLED

- § 11750. Responsibility for distribution
- § 11751. Receipt for distributed property
- § 11752. Inventory by life tenant
- § 11753. Filing receipts and discharge

CHAPTER 4. DECEASED DISTRIBUTE

- § 11800. "Deceased distributee" defined
- § 11801. Distribution despite death of distributee
- § 11802. Manner of distribution

## CHAPTER 5. DEPOSIT WITH COUNTY TREASURER

- § 11850. When deposit with county treasurer authorized
- § 11851. Deposit of money; sale of personal property and deposit of proceeds
- § 11852. Receipt by county treasurer
- § 11853. Copy of order of distribution
- § 11854. Claim of property deposited in county treasury

## CHAPTER 6. DISTRIBUTION TO STATE

- § 11900. Distribution to State of California
- § 11901. Distribution in trust for a class
- § 11902. Disposition of property distributed to state
- § 11903. Claims against property distributed to state
- § 11904. No deposit in county treasury

## CHAPTER 7. PARTITION OR ALLOTMENT OF PROPERTY

- § 11950. Right to partition or allotment
- § 11951. Petition
- § 11952. Parties and notice
- § 11953. Disposition of property
- § 11954. Referees
- § 11955. Costs
- § 11956. Effect of division

## PART 11. CLOSING ESTATE ADMINISTRATION

### CHAPTER 1. TIME FOR CLOSING ESTATE

- § 12200. Time required for closing or status report
- § 12201. Report of status of administration
- § 12202. Failure to make petition or report
- § 12203. Continuation of administration to pay family allowance
- § 12204. Failure of personal representative to comply with order
- § 12205. Sanction for failure to timely close estate
- § 12206. Testamentary limitation of time for administration

### CHAPTER 2. DISCHARGE OF PERSONAL REPRESENTATIVE

- § 12250. Order of discharge
- § 12251. Discharge without administration
- § 12252. Administration after discharge

PART 10. DISTRIBUTION OF ESTATE

CHAPTER 1. ORDER FOR DISTRIBUTION

Article 1. General Provisions

§ 11600. Petition for distribution

11600. The personal representative, a beneficiary, or other interested person may petition the court pursuant to this chapter for an order for preliminary or final distribution of the decedent's estate to the persons entitled thereto.

Comment. Section 11600 restates without substantive change a portion of the first sentence of former Probate Code Section 1000 and a portion of the first paragraph of former Probate Code Section 1020, with the exception of the reference to distribution of "priorities." For the time and manner prescribed for making a petition, see Sections 11620 (petition for preliminary distribution) and 11640 (petition for final distribution). See also Sections 12200-12206 (time for closing estate).

CROSS-REFERENCES

Definitions

Beneficiary § 24

Court § 29

Interested person § 48

Person § 56

Personal representative § 58

§ 11601. Notice of hearing

11601. At least 10 days before the hearing of the petition, notice of the hearing shall be served upon all of the following persons:

(a) Persons who have filed a request for special notice pursuant to Section [1202].

(b) The personal representative.

(c) devisees whose interests in the estate are affected by the petition.

(d) Heirs of the decedent entitled to succeed to any portion of the estate.

(e) The State Controller, if property is to be distributed to the state because there are no known beneficiaries or if property is to be distributed to a beneficiary whose whereabouts is unknown. A copy of the latest account filed with the court shall be served with the notice.

Comment. Subdivisions (a) to (d) of Section 11601 restate without substantive change the third sentence of former Probate Code Section 1000, the second paragraph of former Probate Code Section 1020, and the second paragraph of former Probate Code Section 1027.

Subdivision (e) restates the third paragraph of former Probate Code Section 1027, except that the time of notice is reduced from 30 days to 10.

Notice must be delivered personally or sent by first-class mail, or in the case of a nonresident, by airmail. Sections 7150 and 7152. See also Sections 7307 (notice not required to be given to person giving notice) and 7142 (clerk to set matters for hearing).

#### CROSS-REFERENCES

##### Definitions

Beneficiary § 24  
Court § 29  
Devisee § 34  
Heirs § 44  
Person § 56  
Personal representative § 58  
Property § 62

Note. The notice provisions (Section 1200.5, etc.) will be coordinated later. There is an existing statutory conflict between the notice requirements of Sections 1200.5(11)-(12) and 926 and 1020. See letter from Santa Clara County Bar Association Estate Planning, Probate and Trust Section (April 3, 1985).

#### § 11602. Opposition to petition

11602. Any interested person may oppose the petition.

Comment. Section 11602 restates without substantive change a portion of the last sentence of former Probate Code Section 1000 and a portion of the first paragraph of former Probate Code Section 1020.

#### CROSS-REFERENCES

##### Definitions

Interested person § 48

#### § 11603. Hearing and order

11603. (a) If the court determines that the requirements for distribution are satisfied, the court shall order distribution of the decedent's estate, or such portion as the court directs, to the persons entitled thereto.

(b) The order shall:

(1) Name the distributees and the share to which each is entitled.

(2) Provide that property distributed subject to a limitation or condition, including but not limited to an option granted pursuant to Section [584.3], is distributed to the distributees subject to the terms of the limitation or condition.

Comment. Section 11603 restates portions of former Probate Code Sections 584.3(e), 1001, and 1021 without substantive change. For the requirements for distribution, see Sections 11621 (preliminary distribution) and 11640 (final distribution).

#### CROSS-REFERENCES

Definitions

Court § 29

Order § 53

#### § 11604. Distribution to person other than beneficiary

11604. (a) This section applies where distribution is to be made to any of the following persons:

(1) The transferee of a beneficiary.

(2) Any person other than a beneficiary pursuant to an agreement, request, or instructions of a beneficiary or the attorney in fact of a beneficiary.

(b) The court on its own motion, or on motion of an interested person or of the public administrator, may inquire into the circumstances surrounding the execution of, and the consideration for, the transfer, agreement, request, or instructions, and the amount of any fees, charges, or consideration paid or agreed to be paid by the beneficiary.

(c) The court may refuse to order distribution or may order distribution upon such terms as the court deems just and equitable if the court finds either of the following:

(1) The fees, charges, or consideration paid or agreed to be paid by a beneficiary are grossly unreasonable.

(2) The transfer, agreement, request, or instructions were obtained by duress, fraud, or undue influence.

(d) Notice of the hearing on the motion shall be served upon the beneficiary, and upon the persons described in subdivision (a), personally or by registered mail, as the court may direct, at least 10 days before the hearing.

Comment. Section 11604 restates former Probate Code Section 1020.1 without substantive change.

#### CROSS-REFERENCES

##### Definitions

Beneficiary § 24  
Court § 29  
Interested person § 48  
Person § 56

Note. The notice provision is subject to further review.

#### § 11605. Conclusiveness of order

11605. When a court order made pursuant to this chapter becomes final, the order binds and concludes all interested persons.

Comment. Section 11605 restates portions of former Probate Code Sections 1003, 1021, and 1054. The court may correct clerical errors in orders as entered. Code Civ. Proc. § 473.

#### CROSS-REFERENCES

##### Definitions

Court § 29  
Interested person § 48  
Order § 53  
Person § 56  
Personal representative § 58  
Property § 62

Note. This section will be reviewed in connection with general provisions on the conclusive effect of order.

### Article 2. Preliminary Distribution

#### § 11620. Time for petition

11620. A petition may be made for an order for preliminary distribution of all or a portion of the share of a decedent's estate to which a beneficiary is entitled when two months have elapsed after letters are issued to a general personal representative.

Comment. Section 11620 restates a portion of the first sentence of former Probate Code Section 1000. Distribution of all or a portion of the share to which a beneficiary is entitled includes a payment on account of the share. The petition may be made by the personal representative, a beneficiary, or other interested person. Section 11600 (petition for distribution). If distribution is made before four months have elapsed, the distributee must give a bond in the amount of

the distribution. Section 11622 (bond). If distribution is made after four months have elapsed, the court may require the distributee to give a bond. See Section 11622 (bond).

#### CROSS-REFERENCES

##### Definitions

Beneficiary § 24  
Letters § 52  
Order § 53  
Personal representative § 58

#### § 11621. Order for distribution

11621. (a) The court shall grant a petition made under this article if at the hearing it appears that the distribution may be made without loss to creditors or injury to the estate or any interested person.

(b) The court shall not order distribution until any bond required pursuant to Section 11622 is filed.

Comment. Section 11621 supersedes a portion of former Probate Code Section 1001.

#### CROSS-REFERENCES

##### Definitions

Court § 29  
Interested person § 48

#### § 11622. Bond

11622. (a) If the court orders distribution before four months have elapsed after letters are issued to a general personal representative, the court shall require a bond. The bond shall be in the amount of the distribution.

(b) If the court orders distribution after four months have elapsed after letters are issued to a general personal representative, the court may require a bond. The bond shall be in the amount the court fixes.

(c) Any bond required by the court shall be given by the distributee and filed with the court. The bond shall be conditioned on payment of the distributee's proper share of the debts of the estate, not exceeding the amount distributed.

Comment. Section 11622 supersedes a portion of former Probate Code Section 1001.

#### CROSS-REFERENCES

##### Definitions

Court § 29

Letters § 52

Personal representative § 58

#### § 11623. Distribution under Independent Administration of Estates Act

11623. Notwithstanding any other provision of this article:

(a) If authority is granted to administer the estate without court supervision under the Independent Administration of Estates Act, Part 6 (commencing with Section 10400), the personal representative may petition the court for authority [upon notice in the manner prescribed in Section 1200.5, or] ex parte, or upon such reduced notice as the court may prescribe, for an order for distribution.

(b) A petition pursuant to this section need not include an accounting for a distribution to a trustee if the trustee waives the accounting.

(c) The aggregate of all property distributed pursuant to this section shall not exceed 50 percent of the net value of the estate. For the purpose of this subdivision, "net value of the estate" means the excess of the value of the property in the estate, as determined by all inventories and appraisals on file with the court, over the total amount of all creditor claims and of all liens and encumbrances recorded or known to the personal representative not included in a creditor claim, excluding any estate tax lien occasioned by the decedent's death.

Comment. Section 11623 supersedes former Probate Code Section 1004. Subdivision (c) makes clear that the total of all distributions under this section may not exceed 50% of the net value of the estate.

#### CROSS-REFERENCES

##### Definitions

Court § 29

Order § 53

Personal representative § 58

Property § 62

Note. The notice provisions are subject to further review, including whether request for special notice should be included expressly.

§ 11624. Costs of proceeding

11624. The cost of a proceeding under this article shall be paid by the distributee or the estate in such proportions as the court in its discretion determines.

Comment. Section 11624 supersedes former Probate Code Section 1002. Under this section the allocation of costs is left to the court, whether or not the personal representative is the petitioner. One factor in the exercise of the court's discretion could be whether the personal representative was negligent in failing to make prompt distribution, necessitating a petition under this chapter. For costs of partition, see Section 11905.

CROSS-REFERENCES

Definitions

Court § 29

Note. Whether petitions under this article are extraordinary services for purposes of fees is subject to later review.

Article 3. Final Distribution

§ 11640. Petition and order

11640. (a) When the estate is in a condition to be closed, a petition shall be made for, and the court shall make, an order for final distribution of the estate.

(b) The court shall hear and determine and include in the order all questions arising under Section 6174 (ademption) or Section 6409 (advancement).

Comment. Subdivision (a) of Section 11640 restates portions of the first paragraphs of former Probate Code Sections 1020 and 1027 without substantive change. The petition may be made by the personal representative, a beneficiary, or other interested person. Section 11600 (petition for distribution). Subdivision (b) restates a portion of former Probate Code Section 1054 without substantive change. Unless there has been a waiver of accounts, the estate is not in a condition to be closed until final settlement of the accounts of the personal representative.

CROSS-REFERENCES

Definitions

Court § 29

Order § 53

§ 11641. After-acquired or after-discovered property

11641. Any property acquired or discovered after the court order for final distribution is made shall be distributed in the following manner:

(a) If the order disposes of the property, in the manner provided in the order.

(b) If the order does not dispose of the property, either (i) in the manner ordered by the court upon a petition for instructions or (ii) pursuant to Section 12253 (administration after discharge), if the personal representative has been discharged.

Comment. Section 11641 supersedes former Probate Code Section 1020.5 (supplementary account).

CROSS-REFERENCES

Definitions

Court § 29

Order § 53

Personal representative § 58

Property § 62

CHAPTER 2. DETERMINATION OF PERSONS ENTITLED TO DISTRIBUTION

§ 11700. Petition

11700. At any time after letters are issued to a general personal representative and before an order for final distribution is made, the personal representative, or any person claiming to be a beneficiary or otherwise entitled to distribution of a share of the estate, may file a petition for a court determination of the persons entitled to distribution of the decedent's estate. The petition shall include a statement of the basis for the petitioner's claim.

Comment. Section 11700 restates the first sentence of former Probate Code Section 1080 without substantive change. A special administrator granted the powers, duties, and obligations of a general personal representative may not file a petition under this section if there is a will contest pending.

CROSS-REFERENCES

Definitions

Beneficiary § 24

Court § 29

Letters § 52

Order § 53

Person § 56

Personal representative § 58

§ 11701. Notice of hearing

11701. Notice of hearing shall be given to the persons, for the period, and in the manner required by Section [1200.5]. In addition to the persons to whom notice is required to be given by Section [1200.5], notice of hearing shall be given to all devisees and to all known heirs of the decedent.

Comment. Section 11701 restates the second and third sentences of former Probate Code Section 1080 without substantive change. See also Sections 7142 (clerk to set matters for hearing) and [1200.5] (time and manner of notice of hearing).

CROSS-REFERENCES

Definitions

Devisee § 34  
Heirs § 44  
Person § 56

Note. Coordination of notice provisions will be done later.

§ 11702. Responsive pleading

11702. Any interested person may appear and, at or before the time of the hearing, file a written statement of the person's interest in the estate. No other pleadings are necessary and the allegations of each claimant shall be deemed denied by each of the other claimants to the extent the allegations conflict.

Comment. Section 11702 restates the fourth and fifth sentences of former Probate Code Section 1080 without substantive change.

CROSS-REFERENCES

Definitions

Interested person § 48

§ 11703. Attorney General as party

11703. The Attorney General shall be deemed to be a person entitled to distribution of the estate for purposes of this chapter if the estate involves or may involve any of the following:

(a) A charitable trust, other than a charitable trust with a designated trustee that may lawfully accept the trust.

(b) A devise for a charitable purpose without an identified beneficiary.

(c) An escheat to the State of California.

(d) A trustee who does not accept the trust.

Comment. Subdivisions (a)-(c) of Section 11703 restate the last sentence of former Probate Code Section 1080 without substantive change. Subdivision (d) is new.

#### CROSS-REFERENCES

##### Definitions

Beneficiary § 24

Devise § 32

Person § 56

Trust § 82

Trustee § 84

#### § 11704. Hearing

11704. (a) The court shall hear and consider all papers filed in the proceeding, including any petition filed pursuant to Section 11700 and any statement of interest filed pursuant to Section 11702. The court shall not hear or consider a petition filed after the time prescribed in Section 11700.

(b) The personal representative may file papers and otherwise participate in the proceeding as a party to assist the court.

Comment. Section 11704 restates without substantive change the second sentence and the first portion of the third sentence of former Probate Code Section 1081, except that prior court order is not required for participation of the personal representative. The provisions of former Probate Code Section 1081 for jury trial and special rules of evidence are not continued. The procedure applicable in a proceeding under this chapter is that applicable to civil actions generally. Section 7140 (general rules of practice govern).

#### CROSS-REFERENCES

##### Definitions

Court § 29

Personal representative § 58

#### § 11705. Court order

11705. (a) The court shall make an order that determines the persons entitled to distribution of the decedent's estate and specifies their shares.

(b) When the court order becomes final it is conclusive as to the matter determined.

Comment. Subdivision (a) of Section 11705 restates the last portion of the second sentence of former Probate Code Section 1081 without substantive change. Subdivision (b) restates former Probate Code Section 1082 without substantive change.

Note. General provisions on the conclusive effect of orders have yet to be considered.

### CHAPTER 3. DISTRIBUTION TO PERSONS ENTITLED

#### § 11750. Responsibility for distribution

11750. (a) The personal representative is responsible for distribution of the property in compliance with the terms of the court order for distribution.

(b) A distributee may demand, sue for, and recover from the personal representative or any person in possession, property to which the distributee is entitled.

Comment. Subdivision (a) of Section 11750 is new. In the case of a distribution to a trust, the trustee is the distributee. Cf. Section 34 ("devisee" defined). With respect to after-discovered or after-acquired property, see Section 11641. Subdivision (b) restates a portion of former Probate Code Section 1021.

#### CROSS-REFERENCES

##### Definitions

Court § 29

Order § 53

Person § 56

Personal representative § 58

Property § 62

#### § 11751. Receipt for distributed property

11751. The personal representative shall obtain the receipt of the distributee for property in the estate distributed by the personal representative. In the case of real property, the personal representative shall record the court order for distribution or the personal representative's deed or both in the county in which the real property is located, and recordation of the order or deed is deemed to be a receipt for the property.

Comment. Section 11751 is new. Failure of the personal representative to record the court order for distribution of real property or the personal representative's deed does not affect title of the distributee.

## CROSS-REFERENCES

### Definitions

Court § 29

Order § 53

Personal representative § 58

Property § 62

Real property § 68

### § 11752. Inventory by life tenant

11752. If personal property in the possession of a distributee is subject to possession by the distributee for life only, the personal representative shall demand an inventory of the property from the distributee. Upon receipt, the personal representative shall file the inventory and deliver a copy to any distributee of the remainder.

Comment. Section 11752 supersedes former Section 1065.

## CROSS-REFERENCES

### Definitions

Personal property § 57

Personal representative § 58

### § 11753. Filing receipts and discharge

11753. (a) Distribution in compliance with the court order entitles the personal representative to a full discharge with respect to property included in the order.

(b) The personal representative shall, before or at the time of the petition for discharge, file receipts for all property in the estate. In the case of real property, the personal representative shall file a statement that identifies the recording information for the court order for distribution or the personal representative's deed. As used in this subdivision, "recording information" means the date and place or location of the recording, and may include any other appropriate information.

Comment. Subdivision (a) of Section 11753 restates a portion of former Probate Code Section 1003, but eliminates the reference to a personal representative "in this state. For provisions governing discharge of the personal representative, see Section 12250 et seq. (discharge of personal representative).

Subdivision (b) is new. Recording information under subdivision (b) may include an instrument number and a book and page number where appropriate.

## CROSS-REFERENCES

### Definitions

Court § 29

Order § 53

Personal representative § 58

Property § 62

## CHAPTER 4. DECEASED DISTRIBUTE

### § 11800. "Deceased distributee" defined

11800. As used in this chapter, "deceased distributee" means a beneficiary who survives the decedent but dies before distribution of the share of the decedent's estate to which the beneficiary is entitled.

Comment. Section 11800 incorporates portions of former Probate Code Sections 1022 and 1023. It is intended for drafting convenience.

## CROSS-REFERENCES

### Definitions

Beneficiary § 24

### § 11801. Distribution despite death of distributee

11801. (a) Except as provided in subdivision (b), distribution of a deceased distributee's share of the decedent's estate shall be made pursuant to this chapter, whether or not the deceased distributee is named in the order of distribution, with the same effect as though the distribution were made to the deceased distributee while living.

(b) Distribution of the share of a deceased distributee shall not be made pursuant to this chapter under a will that provides that a person is entitled to take under the will only if the person survives the date of distribution, and any purported distribution of the share of a deceased distributee pursuant to this chapter is void.

Comment. Section 11801 restates the second paragraph of former Probate Code Section 1023 without substantive change.

## CROSS-REFERENCES

### Definitions

Order § 53

Person § 56

Will § 88

§ 11802. Manner of distribution

11802. The deceased distributee's share of the decedent's estate shall be distributed as follows:

(a) Except as otherwise provided in this section, distribution shall be made to the personal representative of the estate of the deceased distributee for the purpose of administration in the estate of the deceased distributee.

(b) If the deceased distributee was issue of the decedent and died intestate while under the age of majority and not having been married, distribution shall be made directly to the heirs of the deceased distributee without administration in the estate of the deceased distributee.

(c) If a person entitled to the deceased distributee's share makes application pursuant to Division 8 (commencing with Section 13000) (disposition of estate without administration), distribution shall be made pursuant to Division 8.

Comment. Subdivision (a) of Section 11802 restates the first paragraph of former Probate Code Section 1023 without substantive change. Subdivision (b) restates former Probate Code Section 1022 without substantive change. Subdivision (c) is new.

**CROSS-REFERENCES**

**Definitions**

Heirs § 44

Person § 56

Personal representative § 58

**CHAPTER 5. DEPOSIT WITH COUNTY TREASURER**

§ 11850. When deposit with county treasurer authorized

11850. Subject to Section 11851, the personal representative may deposit property to be distributed with the county treasurer of the county in which the proceedings are pending in the name of the distributee in any of the following cases:

(a) The property remains in the possession of the personal representative unclaimed for 90 days after the final accounting.

(b) The distributee refuses to accept or give a receipt for the property.

(c) The distributee is a minor or incompetent person who has no guardian, conservator, or other fiduciary to receive the property or person authorized to give a receipt for the property.

(d) For any other reason the property cannot be distributed, and the personal representative desires discharge. Notwithstanding any provision of Section 11851, deposit may not be made pursuant to this subdivision except upon court order.

Comment. Section 11850 supersedes portions of former Probate Code Sections 1060 and 1062. Section 11850 omits reference to a distributee who resides out of the state. Distribution should be made to the named distributee or any known assignee of the named distributee, regardless of the place of residence of the distributee. If the distributee is a nonresident minor or nonresident incompetent person who has a guardian, conservator, or other fiduciary of the estate legally appointed under the law of another jurisdiction, the distribution of the person's share should be made to the fiduciary. Cf. former Probate Code Section 1061.

#### CROSS-REFERENCES

##### Definitions

Court § 29

Order § 53

Person § 56

Personal representative § 58

Property § 62

#### § 11851. Deposit of money; sale of personal property and deposit of proceeds

11851. (a) If property authorized by Section 11850 to be deposited with the county treasurer consists of money, the personal representative may deposit the money.

(b) If property authorized by Section 11850 to be deposited with the county treasurer consists of personal property other than money, the personal representative may not deposit the personal property except upon court order. If it appears to the court that sale is for the benefit of interested persons, the court shall order personal property sold, and the proceeds of sale, less expenses of sale allowed by the court, shall be deposited in the county treasury. If it appears to the court that sale is not for the benefit of interested persons, the court shall order personal property deposited with the State Controller, to be held subject to the provisions of Chapter 6 (commencing with Section 11900).

Comment. Section 11851 supersedes portions of former Probate Code Sections 1060 and 1062.

#### CROSS-REFERENCES

##### Definitions

Court § 29  
Interested person § 48  
Order § 53  
Personal property § 57  
Personal representative § 58

Note. Treatment of interest on deposit is under review.

#### § 11852. Receipt by county treasurer

11852. The county treasurer shall give a receipt for a deposit made pursuant to this chapter and is liable on the official bond of the county treasurer for the money deposited. The receipt has the same force and effect as if executed by the distributee.

Comment. Section 11852 restates the last portions of former Probate Code Sections 1060 and 1062, except that the provision for a receipt having the effect of a voucher is not continued. Personal property not ordered sold may be deposited with the State Controller. See Section 11851 (deposit of money; sale of personal property and deposit of proceeds).

#### § 11853. Copy of order of distribution

11853. If money is deposited or is already on deposit with the county treasurer, the personal representative shall deliver to the county treasurer a certified copy of the order for distribution.

Comment. Section 11853 restates former Probate Code Section 1060.1 without substantive change. Personal property not ordered sold may be deposited with the State Controller. See Section 11851 (deposit of money; sale of personal property and deposit of proceeds).

#### CROSS-REFERENCES

##### Definitions

Order § 53  
Personal representative § 58

#### § 11854. Claim of property deposited in county treasury

11854. (a) A person may claim property on deposit in the county treasury by filing a petition with the court. The petition shall show the person's claim or right to the property. The petition shall state

the facts required to be stated in a petition filed under Section 1355 of the Code of Civil Procedure. Upon the filing of the petition, the same proceedings shall be had as are required by that section, except that the hearing shall be ex parte unless the court orders otherwise.

(b) At least [20] days before the hearing of the petition, a copy of the petition shall be served on the Attorney General. The Attorney General may answer the petition, at the Attorney General's discretion.

(c) If the court is satisfied of the claimant's right to the property claimed, the court shall make an order establishing the right. Upon presentation of a certified copy of the order, the county auditor shall draw a warrant on the county treasurer for the amount of money covered by the order.

(d) A claim for money distributed in the estate of a deceased person made after the deposit of the property in the State Treasury is governed by the provisions of Chapter 3 (commencing with Section 1335) of Title 10 of Part 3 of the Code of Civil Procedure.

Comment. Section 11854 restates subdivision (a) of former Probate Code Section 1064, but omits the provisions relating to property other than money deposited with the county treasurer. Such property may be deposited with the State Controller. See Section 11850 (when deposit with county treasurer authorized). Personal property not ordered sold may be deposited with the State Controller. See Section 11851 (deposit of money; sale of personal property and deposit of proceeds).

Unlike the former provision, Section 11854 provides for an ex parte order, and substitutes a court order for the certificate of right.

#### CROSS-REFERENCES

##### Definitions

Court § 29

Order § 53

Person § 56

Property § 62

Verification required § 7203

Note. The time for notice to A.G. will be reviewed in connection with the general Probate Code notice provisions, as will notice requirements for other persons.

#### CHAPTER 6. DISTRIBUTION TO STATE

##### § 11900. Disposition of property distributed to state

11900. (a) The court shall order distributed to the State of California property in the estate not ordered distributed to the known beneficiaries.

(b) Insofar as practicable, any real property or tangible personal property shall be converted to money before distribution to the state.

Comment. Section 11900 restates the last portion of the first paragraph of former Probate Code Section 1027 without substantive change.

#### CROSS-REFERENCES

##### Definitions

Court § 29  
Personal property § 57  
Property § 62  
Real property § 68

#### § 11901. Distribution in trust for a class

11901. If the court orders distribution of property in the decedent's estate to the State of California, and the order includes words that otherwise create a trust in favor of unknown or unidentified persons as a class, the distribution shall vest in the state both legal and equitable title to the property.

Comment. Section 11901 restates the fourth paragraph of former Probate Code Section 1027 without substantive change. The title of the state pursuant to this section is subject to the right of persons to claim the property as provided in this chapter. See Section 11903 (claims against property distributed to state).

#### CROSS-REFERENCES

##### Definitions

Court § 29  
Order § 53  
Person § 56  
Property § 62  
Trust § 82

#### § 11902. Disposition of property distributed to state

11902. (a) If the court orders distribution to the State of California, the personal representative shall promptly:

(1) Deliver any money to the State Treasurer.

(2) Deliver any personal property other than money to the State Controller for deposit in the State Treasury.

(3) Cause a certified copy of the order to be recorded in the office of the county recorder of each county in which any real property is situated.

(b) At the time of making a delivery of property or recordation pursuant to this section, the personal representative shall deliver to the State Controller the recorded certified copy of the order for distribution.

Comment. Section 11902 restates without substantive change the fifth and sixth paragraphs of former Probate Code Section 1027 and former Probate Code Section 1028.

#### CROSS-REFERENCES

##### Definitions

Court § 29  
Order § 53  
Personal property § 57  
Personal representative § 58  
Property § 62  
Real property § 68

#### § 11903. Claims against property distributed to state

11903. (a) Property distributed to the state shall be held by the State Treasurer for a period of five years from the date of the order for distribution, within which time any person may claim the property in the manner provided by Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure.

(b) A person who does not claim the property within the time prescribed in this section is forever barred, and the property vests absolutely in the state, subject to the provisions of Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure.

Comment. Section 11903 restates the eighth and ninth paragraphs of former Section 1027 without substantive change. It should be noted that under the general claim procedures of the Code of Civil Procedure, the limitations bar may be tolled as to minors and incompetent persons in some situations. See, e.g., Code Civ. Proc. § 1441.

#### CROSS-REFERENCES

##### Definitions

Order § 53  
Person § 56  
Property § 62

#### § 11904. No deposit in county treasury

11904. No deposit of property of an estate shall be made in the county treasury by a personal representative if any other property of the estate is or has been distributed to the State of California

pursuant to this chapter, but the property that would otherwise be deposited in the county treasury shall be transmitted forthwith to the State Treasurer or State Controller as provided in this chapter.

Comment. Section 11904 restates the seventh paragraph of former Probate Code Section 1027 without substantive change. See also Section 7642 (general rules governing administration of estates apply to public administrator). Section 11904 is intended for the convenience of the claimant of property in only having to deal with one governmental agency.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Property § 62

### CHAPTER 7. PARTITION OR ALLOTMENT OF PROPERTY

#### § 11950. Right to partition or allotment

11950. If two or more beneficiaries are entitled to the distribution of undivided interests in property and have not agreed among themselves to a partition, allotment, or other division of the property, any of them, or the personal representative at the request of any of them, may petition the court to make a partition, allotment, or other division of the property that will be equitable and will avoid the distribution of undivided interests.

Comment. Section 11950 restates former Probate Code Section 1100 without substantive change. Both real and personal property are subject to division under this chapter. See Section 62 ("property" defined). It should be noted that partitioned property may not be distributed except pursuant to the general provisions for distribution.

#### CROSS-REFERENCES

##### Definitions

Beneficiary § 24

Court § 29

Personal representative § 58

Property § 62

#### § 11951. Petition

11951. (a) A petition pursuant to this chapter may be filed with the clerk at any time before distribution of the affected property has been ordered.

(b) The petition shall:

(1) Describe the property.

(2) Give the names of the persons having or claiming undivided interests.

(3) State what the undivided interests are, so far as known to the petitioner.

Comment. Section 11951 restates the first and second sentences of former Probate Code Section 1101 without substantive change, except that the petition may be filed before the time to make claims has expired.

#### CROSS-REFERENCES

##### Definitions

Clerk § 27

Person § 56

Property § 62

#### § 11952. Parties and notice

11952. (a) Notice of the hearing shall be given to the persons entitled to distribution of the undivided interests and to the personal representative. Any objection to the jurisdiction of the court shall be made and resolved in the manner prescribed in Section [851.5].

(b) When all persons in interest have appeared or are in default, the matter shall be heard by the court. The persons in interest who have filed written appearances shall be considered the parties to the proceeding and each is entitled to five days' notice of the hearing. No one shall be considered as a plaintiff or as a defendant.

Comment. Subdivision (a) of Section 11952 supersedes the third, fourth, and fifth sentences of former Probate Code Section 1101. Subdivision (b) restates former Probate Code Section 1102.

#### CROSS-REFERENCES

Clerk to set matter for hearing § 7202

##### Definitions

Court § 29

Person § 56

Personal representative § 58

#### § 11953. Disposition of property

11953. (a) The court shall take evidence and shall partition, allot, and divide the property so that each party receives property of a value proportionate to the party's interest in the whole.

(b) The court may direct the personal representative to sell property when, under the circumstances, sale would be more equitable than partition and when the property cannot conveniently be allotted to any one party. The sale shall be conducted in the same manner as other sales made during administration of an estate.

(c) Any two or more parties may agree to accept undivided interests.

Comment. Section 11953 restates former Probate Code Section 1103 without substantive change.

#### CROSS-REFERENCES

##### Definitions

Court § 29

Personal representative § 58

Property § 62

#### § 11954. Referees

11954. (a) The court, in its discretion, may appoint one or three referees to partition property capable of being partitioned, if requested to do so by a party. The number of referees appointed must conform to the request of at least one of the parties.

(b) The referees shall have the powers and perform the duties of referees in civil actions for partition, and the court shall have the same powers with respect to their report as in such actions.

Comment. Section 11954 restates former Probate Code Section 1104 without substantive change.

#### CROSS-REFERENCES

##### Definitions

Court § 29

Property § 62

#### § 11955. Costs

11955. The expenses of partition shall be equitably apportioned by the court among the parties, but each party must pay the party's own attorney's fees. The amount charged to each party constitutes a lien on the property allotted to the party.

Comment. Section 11955 restates former Probate Code Section 1105 without substantive change. It is an exception to the general rules stated in Section 11624 (costs of proceeding).

## CROSS-REFERENCES

### Definitions

Court § 29

Property § 62

### § 11956. Effect of division

11956. (a) The partition, allotment, or other division made by the court shall control upon proceedings for distribution, unless modified for good cause upon reasonable notice.

(b) The proceedings leading to the partition, allotment, or other division may be reviewed upon appeal from the order for distribution.

Comment. Section 11956 restates former Probate Code Section 1106 without substantive change.

## CROSS-REFERENCES

### Definitions

Court § 29

Order § 53

## PART 11. CLOSING ESTATE ADMINISTRATION

### CHAPTER 1. TIME FOR CLOSING ESTATE

### § 12200. Time required for closing or status report

12200. The personal representative shall either petition for an order for final distribution of the estate or make a report of status of administration not later than the following times:

(a) In an estate for which a federal estate tax return is required, within one year after the date of issuance of letters.

(b) In an estate for which a federal estate tax return is not required, within 18 months after the date of issuance of letters.

Comment. Section 12200 restates the first sentence of former Probate Code Section 1025.5 without substantive change.

## CROSS-REFERENCES

### Definitions

Letters § 52

Personal representative § 58

Verification required § 7203

§ 12201. Report of status of administration

12201. If a report of status of administration is made pursuant to Section 12200:

(a) The report shall show the condition of the estate, the reasons why the estate cannot be distributed and closed, and an estimate of the time needed to close administration of the estate.

(b) The report shall be filed with the court. Notice of hearing of the report shall be given to persons then interested in the estate in the manner provided in Section [1200.5].

(c) Upon the hearing of the report, the court may order either of the following:

(1) That the administration of the estate continue for the time and upon the terms and conditions that appear reasonable, if the court determines that continuation of administration is in the best interests of the estate or of interested persons.

(2) That the personal representative must petition for final distribution.

Comment. Section 12201 restates the second, third, and fourth sentences of former Probate Code Section 1025.5 without substantive change.

CROSS-REFERENCES

Definitions

Court § 29

Interested person § 48

Personal representative § 58

Verification required § 7203

Note. General notice provisions have not yet been drafted.

§ 12202. Failure to petition or make report

12202. (a) If the personal representative does not petition or make a report within the time required by this chapter or prescribed by the court, the court may, upon petition of any interested person or upon its own motion, cite the personal representative to appear before the court and show the condition of the estate and the reasons why the estate cannot be distributed and closed.

(b) Upon the hearing of the citation, the court may either order the administration of the estate to continue, as provided in Section 12201, or order the personal representative to petition for final distribution.

Comment. Section 12201 restates the second paragraph of former Probate Code Section 1025.5 without substantive change.

#### CROSS-REFERENCES

##### Definitions

Court § 29

Interested person § 48

Personal representative § 58

Note. General provisions governing citations are not yet drafted.

#### § 12203. Continuation of administration to pay family allowance

12203. (a) For purposes of this chapter, continuation of the administration of the estate in order to pay a family allowance is not in the best interests of the estate or interested persons unless the court determines both of the following:

(1) The family allowance is needed by the recipient to pay for necessities of life, including education so long as pursued to advantage.

(2) The needs of the recipient for continued family allowance outweigh the needs of the decedent's beneficiaries whose interests would be adversely affected by continuing the administration of the estate for this purpose.

(b) Nothing in this section shall be construed to authorize continuation of a family allowance beyond the time prescribed in Section 6543.

Comment. Subdivision (a) of Section 12203 restates former Probate Code Section 1026 without substantive change. Subdivision (b) makes clear the interrelation between this section and Section 6543 (termination of family allowance). Nothing in Section 12203 limits the power of the court to order a preliminary distribution of the estate.

#### CROSS-REFERENCES

##### Definitions

Beneficiary § 24

Court § 29

Interested person § 48

§ 12204. Failure of personal representative to comply with order

12204. Failure of the personal representative to comply with an order made under this chapter is grounds for removal from office.

Comment. Section 12204 restates the third paragraph of former Probate Code Section 1025.5 without substantive change.

CROSS-REFERENCES

Definitions

Order § 53

Personal representative § 58

§ 12205. Sanction for failure to timely close estate

12205. If the time taken for administration of the estate exceeds the time required by this chapter or prescribed by the court, the court may, upon the hearing for final distribution or for an allowance upon the commissions of the personal representative or upon the fees of the attorney, reduce the commissions or fees by an amount the court deems appropriate, regardless of whether the fees or commissions otherwise allowable under the provisions of Sections [901 and 910] would be reasonable compensation for the services rendered, if the court determines that the time taken was within the control of the personal representative or attorney and was not in the best interest of the estate or interested persons. In making a determination pursuant to this section, the court shall take into account any action taken under Section 12202 as a result of a previous delay.

Comment. Section 12205 restates the fourth paragraph of former Probate Code Section 1025.5, with the addition of a direction to the court to consider prior delays in setting sanctions.

CROSS-REFERENCES

Definitions

Court § 29

Interested person § 48

Personal representative § 58

§ 12206. Testamentary limitation of time for administration

12206. A limitation in a will of the time for administration of an estate is directory only and does not limit the power of the personal representative or the court to continue administration of the estate beyond the time limited if the continuation is necessary.

Comment. Section 12206 restates former Probate Code Section 1025 without substantive change.

#### CROSS-REFERENCES

##### Definitions

Court § 29

Personal representative § 58

Will § 88

## CHAPTER 2. DISCHARGE OF PERSONAL REPRESENTATIVE

### § 12250. Order of discharge

12250. When the personal representative has complied with the terms of the order for final distribution and has filed the appropriate receipts, the court shall, upon ex parte petition therefor, make an order discharging the personal representative from all liability incurred thereafter.

Comment. Section 12550 restates former Probate Code Section 1066, except that the provision for production of vouchers is not continued, and the petition is made ex parte. The estate is fully administered for purposes of this section when all sums of money due from the personal representative have been paid, all property of the estate has been distributed to the persons entitled pursuant to court order, and all the acts lawfully required of the personal representative have been performed. As to after-discovered property, see Section 11641 (after-acquired or after-discovered property).

#### CROSS-REFERENCES

##### Definitions

Court § 29

Order § 53

Personal representative § 58

Verification required § 7203

### § 12251. Discharge without administration

12251. (a) At any time after appointment of a personal representative and whether or not letters have been issued, the personal representative may sign and file a petition setting forth the fact that it appears there is no property of any kind belonging to the estate and subject to administration, and praying for the termination of further proceedings and for discharge of the personal representative.

(b) If it appears to the satisfaction of the court upon the hearing that the facts stated in the petition are true, the court shall make an order terminating the proceeding and discharging the personal representative.

Comment. Section 12251 restates former Probate Code Section 1068 without substantive change. Proceedings may be taken under this section without the return of an inventory provided for by [Chapter 9 (commencing with Section 600) of Division 3]. See subdivision (a) ("at any time").

#### CROSS-REFERENCES

##### Definitions

Court § 29

Letters § 52

Order § 53

Personal representative § 58

Property § 62

Verification required § 7203

NOTE. Notice of hearing requirements are being reviewed in connection with this section. It would seem that the same notice provisions should apply as for a petition for final distribution. The extent to which another person should be able to act for the personal representative will be governed by general provisions.

#### § 12252. Administration after discharge

12252. If subsequent administration of an estate is necessary after the personal representative has been discharged because other property is discovered or because it becomes necessary or proper for any cause:

(a) The court shall appoint as personal representative the person entitled to appointment in the same order and manner as is directed in relation to original appointment, except that the person who served as personal representative at the time of the order of discharge has priority.

(b) If property has been distributed to the State of California, a copy of any petition for subsequent appointment of a personal representative and the notice of hearing shall be served upon the State Controller at the time and in the manner prescribed by Section [1200].

Comment. Section 12252 restates former Probate Code Section 1067 without substantive change. As to after-discovered property, see Section 11641 (after-acquired or after-discovered property).

## CROSS-REFERENCES

### Definitions

Court § 29

Order § 53

Person § 56

Personal representative § 58

*NOTE. Notice requirement is being reviewed. Status of state and county treasurers is being reviewed.*

COMMENTS TO REPEALED SECTIONS

CHAPTER 5. DISTRIBUTION AND DISCHARGE

Article 1. Preliminary Distribution

Probate Code § 1000 (repealed)

Comment. The introductory portion of the first half of the first sentence of former Section 1000 is restated in Estate and Trust Code Sections 11620 (time for petition), 11621 (order for distribution), and 11622 (bond), without substantive change. The remainder of the first half of the first sentence is restated without substantive change in Estate and Trust Code Section 11600 (petition for distribution). [The second half of the first sentence will be disposed of later.]

The second sentence is restated without substantive change in Estate and Trust Code Section 7142 (clerk to set matters for hearing). The third sentence is restated without substantive change in Estate and Trust Code Section 8701 (notice of hearing). The fourth sentence is restated without substantive change in Estate and Trust Code Sections 7150 (service) and 7152 (mailing). The last sentence is restated without substantive change in Estate and Trust Code Sections 11602 (opposition to petition) and 9630 (authority of joint personal representatives to act).

Probate Code § 1001 (repealed)

Comment. Former Section 1001 is superseded by Estate and Trust Code Sections 11603(a) (hearing and order), 11621 (order for distribution), and 11622 (bond).

Probate Code § 1002 (repealed)

Comment. Former Section 1002 is superseded by Estate and Trust Code Section 11624 (costs of proceeding).

Probate Code § 1003 (repealed)

Comment. Former Section 1003 is restated in Estate and Trust Code Sections 11753 (filing receipts and discharge) and 11605 (conclusiveness of order).

Probate Code § 1004 (repealed)

Comment. Former Section 1004 is restated without substantive change in Estate and Trust Code Sections 11623 (distribution under Independent Administration of Estates Act), 7142 (clerk to set matters for hearing), and 11621 (order for distribution).

Article 2. Final Distribution

Probate Code § 1020 (repealed)

Comment. The first sentence of former Section 1020 is restated without substantive change in Estate and Trust Code Sections 11640 (petition and order) and 11600 (petition for distribution). The second sentence is restated without substantive change in Estate and Trust

Code Sections 11602 (opposition to petition) and 9630 (authority of joint personal representatives to act). The third sentence is restated without substantive change in Estate and Trust Code Section 11601 (notice of hearing). The fourth sentence is restated without substantive change in Estate and Trust Code Sections 7150 (service) and 7152 (mailing).

Probate Code § 1020.1 (repealed)

Comment. Former Section 1020.1 is restated without substantive change in Estate and Trust Code Section 11604 (distribution to person other than heir or devisee).

Probate Code § 1020.5 (repealed)

Comment. former Section 1020.5 is not continued; it is superseded by Estate and Trust Code Sections 11750 (responsibility for distribution, 11753 (filing receipts and discharge), and 11641 (after-acquired or after-discovered property).

Probate Code § 1021 (repealed)

Comment. Former Section 1021 is restated without substantive change in Estate and Trust Code Sections 11603(b) (hearing and order) and 11605(a) and (c) (conclusiveness of order and distribution).

Probate Code § 1022 (repealed)

Comment. Former Section 1022 is restated in Estate and Trust Code Sections 11800-11802 (deceased distributee) without substantive change.

Probate Code § 1023 (repealed)

Comment. Former Section 1023 is restated in Estate and Trust Code Sections 11800-11802 (deceased distributee) without substantive change.

Probate Code § 1024 (repealed)

Comment. Former Section 1024 is not continued, because it is unnecessary. Payment of taxes is an obligation of the personal representative (Section \_\_\_\_), and the estate may not be distributed unless obligations of the estate are accommodated (Estate and Trust Code Section 11621 (order for distribution)).

Probate Code § 1025 (repealed)

Comment. Former Section 1025 is restated without substantive change in Section 12206 (testamentary limitation of time for administration).

Probate Code § 1025.5 (repealed)

Comment. The first sentence of the first paragraph of former Section 1025.5 is restated without substantive change in Sections 12200 (time required for closing or status report), 7203 (verification required), and 12201 (report of status of administration). The substance of the second, third, and fourth sentences is restated without substantive change in Section 12201 (report of status of administration).

The second paragraph is restated without substantive change in Section 12202 (failure to make petition or report). The third paragraph is restated without substantive change in Section 12204

(failure of personal representative to comply with order). The fourth paragraph is restated without substantive change in Section 12205 (sanction for failure to timely close estate).

Probate Code § 1026 (repealed)

Comment. Former Section 1026 is continued without substantive change in Section 12203 (continuation of administration to pay family allowance).

Probate Code § 1027 (repealed)

Comment. The first sentence of former Section 1027 is restated without substantive change in Estate and Trust Code Section 11640 (petition and order). The remainder of the first paragraph is restated without substantive change in Estate and Trust Code Section 11900 (distribution to State of California).

The first sentence of the second paragraph is restated in Estate and Trust Code Section 11601 (notice of hearing). The second sentence is restated without substantive change in Estate and Trust Code Sections 7150 (service) and 7152 (mailing).

The third paragraph is restated without substantive change in Estate and Trust Code Section 11601 (notice of hearing), except that the provision for 30 days notice is not continued. The fourth paragraph is restated without substantive change in Estate and Trust Code Section 11904 (distribution to state in trust). The fifth and sixth paragraphs are restated without substantive change in Estate and Trust Code Section 11902 (disposition of property distributed to state). The seventh paragraph is restated without substantive change in Estate and Trust Code Sections 11904 (no deposit in county treasury) and 7642 (general rules governing administration of estates apply to public administrator). The eighth and ninth paragraphs are restated without substantive change in Estate and Trust Code Section 11903 (claims against property distributed to state).

Probate Code § 1028 (repealed)

Comment. Former Section 1028 is restated without substantive change in Estate and Trust Code Section 11902 (disposition of property distributed to state).

Article 3. Distribution in Satisfaction of Certain Bequests

Probate Code § 1030 (repealed)

Comment. Former Section 1030 is continued without substantive change in Estate and Trust Code Section 6180 (definitions).

Probate Code 1031 (repealed)

Comment. Former Section 1031 is continued without substantive change in Estate and Trust Code Section 6181 (application of chapter).

Probate Code § 1032 (repealed)

Comment. Former Section 1032 is continued without substantive change in Estate and Trust Code Sections 6182 (marital deduction gifts) and 6183 (charitable remainder unitrusts and annuity trusts).

Probate Code § 1033 (repealed)

Comment. Former Section 1033 is continued without substantive change in Estate and Trust Code Section 6184 (satisfaction of a pecuniary devise).

Probate Code § 1034 (repealed)

Comment. Former Section 1034 is continued without substantive change in Estate and Trust Code Section 6185 (maximum marital deduction for will dated September 13, 1981, or earlier).

Probate Code § 1035 (repealed)

Comment. Former Section 1035 is continued without substantive change in Estate and Trust Code Section 6186 (marital deduction gift in trust).

Probate Code § 1036 (repealed)

Comment. Former Section 1036 is continued without substantive change in Estate and Trust Code Section 6187 (survivorship requirement for marital deduction gift).

Probate Code § 1037 (repealed)

Comment. Former Section 1037 is continued without substantive change in Estate and Trust Code Section 6188 (no inference as to prior law).

Probate Code § 1038 (repealed)

Comment. Former Section 1038 is continued without substantive change in Estate and Trust Code Section 6189 (severability clause).

Probate Code § 1039 (repealed)

Comment. Former Section 1039 is continued without substantive change in Estate and Trust Code Section 6190 (bona fide purchaser).

Article 4. Estates of Nonresidents

Probate Code § 1040 (repealed)

Comment. [To be drafted.]

Probate Code § 1041 (repealed)

Comment. [To be drafted.]

Probate Code § 1042 (repealed)

Comment. [To be drafted.]

Probate Code § 1043 (repealed)

Comment. [To be drafted.]

Probate Code § 1043a (repealed)

Comment. [To be drafted.]

## Article 5. Advancements and Ademptions

### Probate Code § 1054 (repealed)

Comment. Former Section 1054 is restated without substantive change in Estate and Trust Code Sections 11640 (petition and order) and 11605 (conclusiveness of order and distribution).

### Probate Code § 1055 (repealed)

Comment. [To be drafted. This provision should go among the transitional provisions.]

## Article 6. Discharge

### Probate Code § 1060 (repealed)

Comment. The first portion of former Section 1060 is superseded by Estate and Trust Code Section 11850 (when deposit with county treasurer authorized). The last portion is restated without substantive change in Estate and Trust Code Section 11852 (receipt by county treasurer), except that the provision of a receipt having the effect of a voucher is not continued.

### Probate Code § 1060.1 (repealed)

Comment. Former Section 1060.1 is restated without substantive change in Estate and Trust Code Section 11853 (copy of decree of distribution).

### Probate Code § 1061 (repealed)

Comment. Former Section 1061 is superseded by Estate and Trust Code Section 11850 (when deposit with county treasurer authorized).

### Probate Code § 1062 (repealed)

Comment. Former Section 1062 is superseded by Estate and Trust Code Sections 11850 (when deposit with county treasurer authorized), 11851 (deposit of money; sale of personal property and deposit of proceeds), and 11852 (receipt by county treasurer).

### Probate Code § 1063 (repealed)

Comment. Former Section 1063 is not continued.

### Probate Code § 1064 (repealed)

Comment. Subdivision (a) of former Section 1064 is restated without substantive change in Estate and Trust Code Section 11854 (claim of property deposited in county treasury). Subdivision (b) is not continued; it provided an infrequently used alternate procedure.

### Probate Code § 1065 (repealed)

Comment. Former Section 1065 is not continued. For the receipt of the distributee, see Estate and Trust Code Section 11751 (receipt for distributed property).

Probate Code § 1066 (repealed)

Comment. Former Section 1066 is restated without substantive change in Estate and Trust Code Section 12250 (order of discharge), except that the provision for production of vouchers is not continued and the petition is made ex parte.

Probate Code § 1067 (repealed)

Comment. Former Section 1067 is restated without substantive change in Estate and Trust Code Section 12252 (administration after discharge).

Probate Code § 1068 (repealed)

Comment. Former Section 1068 is restated without substantive change in Estate and Trust Code Sections 12251 (discharge without administration), 7203 (verification required), and 7202 (clerk to set matter for hearing).

CHAPTER 17. DETERMINATION OF HEIRSHIP

Probate Code § 1080 (repealed)

Comment. The first sentence of former Section 1080 is restated without substantive change in Estate and Trust Code Section 11700 (petition). The second and third sentences are superseded by Estate and Trust Code Section 11701 (notice of hearing). The fourth and fifth sentences are restated without substantive change in Estate and Trust Code Section 11702 (responsive pleading). The last sentence is restated without substantive change in Estate and Trust Code Section 11703 (Attorney General as party).

Probate Code § 1081 (repealed)

Comment. The first sentence of the first paragraph of former Section 1081, providing for jury trial, is not continued. The second and third sentences are restated without substantive change in Estate and Trust Code Sections 11704 (hearing) and 11705 (court order). The second paragraph is superseded by Estate and Trust Code Section 7140 (general rules of practice govern).

Probate Code § 1082 (repealed)

Comment. Former Section 1082 is restated without substantive change in Section Estate and Trust Code 11705(b) (court order).

CHAPTER 18. PARTITION BEFORE DISTRIBUTION

Probate Code § 1100 (repealed)

Comment. Former Section 1100 is restated without substantive change in Estate and Trust Code Sections 11950 (right to partition or allotment) and 62 ("property" defined).

Probate Code § 1101 (repealed)

Comment. The first and second sentences of Section 1101 are restated without substantive change in Estate and Trust Code Section 11951 (petition). The third, fourth, and fifth sentences are superseded by subdivision (a) of Estate and Trust Code Section 11952 (parties and notice).

Probate Code § 1102 (repealed)

Comment. Former Section 1102 is restated without substantive change in Estate and Trust Code Section 11952 (parties and notice).

Probate Code § 1103 (repealed)

Comment. Former Section 1103 is restated without substantive change in Estate and Trust Code Section 11953 (disposition of property).

Probate Code § 1104 (repealed)

Comment. Former Section 1104 is restated without substantive change in Estate and Trust Code Section 11954 (referees).

Probate Code § 1105 (repealed)

Comment. Former Section 1105 is restated without substantive change in Estate and Trust Code Section 11955 (costs).

Probate Code § 1106 (repealed)

Comment. Former Section 1106 is restated without substantive change in Estate and Trust Code Section 11956 (effect of division).